IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3679 of 2001 & FIRST APPEAL No. 3961 of 2001 with CIVIL APPLICATION NO. 9760 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

THAVARDAS GANDUMAL CHATUR

Appearance:
MR NK MAJMUDAR for Gujarat Electricity Board
MR CL SONI for Respondents

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

Heard. Appeals admitted. Mr. C.L. Soni,

learned Advocate appears on behalf of the respondent in both appeals and waives service of notice in the appeals.

2. On the joint request of the learned Counsel for the respective parties, these appeals are taken up for hearing today.

3. These are appeals under Section 96 of the Civil Procedure Code at the instance of the Gujarat Electricity Board, challenging the common judgement and decrees passed by the Civil Judge (Senior Division) Gandhidham, Kutch in Special Civil Suit No. 187/95 and Special Civil Suit No. 9/96.

4. The aforesaid two Suits are between the same parties and are cross-suits claiming reliefs against an action taken by the other. Special Civil Suit No. 187/95 was filed by the consumer of the Electricity Board, challenging the supplementary bills issued by the defendant Board, and also praying for a money decree for the refund of the money he had paid or deposited with the Board during the pendency of proceedings before the Appellate Committee. The Gujarat Electricity Board had filed Special Civil Suit No. 9/96, claiming a money decree in terms of the supplementary bills issued by it upon the said consumer.

5. We have heard the learned Counsel for the respective parties and carefully perused the impugned judgement and decrees. We have also referred to such evidenciary material on record to which our attention has been drawn.

6. As a result of this exercise and on perusal of the appropriate material, we are of the opinion that the impugned common judgement is eminently sustainable looking to the findings of fact recorded, which in turn are based on the evidenciary material on record. There is only one minor aspect which may require consideration, namely - the interest awarded in favour of the consumer by the trial Court, which we shall deal with hereinafter as an independent point.

7. On the facts and circumstances of the case, as narrated hereinabove, these appeals, so far the challenge of the common judgement and decrees passed by the Civil Court are concerned, require to be substantially dismissed.

8. Only a few salient features require to be noted.

9. The crux of the controversy between the parties is issuance of supplementary bills by the Gujarat Electricity Board upon the consumer which is apparently a claim arising from the inspection carried out by a checking squad of the Board in respect of the premises of the consumer, the findings of such checking squad recorded in its report, and the panchnama prepared by the said checking squad.

10. It requires to be noted that as per the evidence on record, the inspection of the premises of the consumer was taken by the checking squad on 21st December, 1991. This date is beyond controversy inasmuch as the same is mentioned categorically in the oral evidence led by the Board, and is also specifically mentioned in the checking report prepared by the checking squad. Inspite of this, the panchnama which is said and alleged to have been prepared, and purporting to be a record of what the checking squad found during the course of inspection stated the next day i.e 22.12.1991. This difference in dates, inspite of events which are supposed to have been contemporaneous, have not been explained at all. On the other hand the oral evidence led on behalf of the Board only creates greater confusion, whereby it is asserted that the checking squad had visited the premises of the consumer on 21st Dec. 1991, but had returned to the same premises on the next day, namely 22.12.1991, but that no other procedure or action was taken on the next day. Thus, the trial Court was justified in observing that the preparation of the panchnama on the specified date becomes doubtful, and also reflects upon the legitimacy of the checking report.

11. Even otherwise if this factor is to be ignored, it requires to be noted that the checking report prepared by the checking squad does not contain any allegation of theft at all. The only aspect of any significance in the said report is that the seals on the meter were missing and that this creates a suspicion as regards the possibility of theft of energy. At the same time, the said report as also the oral evidence establish that the metal body of the meter was intact, that there was no hole in the body of the meter whereby any external object could be inserted into the meter, to curtail or modify its normal function.

12. It is also an admitted fact on record that the meter itself was not sent for testing to any laboratory whatsoever, whether it be a laboratory of the Electricity Board itself or for testing to the Electrical Inspector

under the provisions of Sec. 26 of the Indian Electricity Act.

13. On these facts it becomes obvious that the supplementary bill issued by the Electricity Board against the consumer, which is the centre of the controversy, has been issued either on suspicion of theft of energy or on presumption of theft, but has not been issued for actual theft of electricity. In the premises aforesaid and in view of the finding of fact recorded by the trial Court, which we hereby upheld, we find that there is no substance in these appeals.

14. However, a minor aspect does require consideration.

15. The trial Court has, while decreeing the suit of the consumer, namely - Special Civil Suit No. 187/95, directed the defendant Electricity Board to refund the amount due to the consumer within one month of the decree, and in case the refund is not made as directed, the said amount would bear an interest at the rate of 24% per annum after the period of one month. In this context, it was contended that the interest at the rate of 24% per annum amounts to penal interest and the same is not justified. Learned Counsel for the consumer was not able to justify this higher figure imposed by the trial Court as penal interest, but left the appropriate rate of interest to the discretion of this Court. On the facts and circumstances of the case, we find and direct that interest at the rate of 12% per annum would be appropriate, and the said figure of 12% per annum shall be substituted for the figure of 24% per annum in respect of decree passed by the trial Court in Special Civil Suit No. 187/95.

16. In the premises aforesaid, First Appeal No. 3679 of 2001 is dismissed with no order as to costs and First Appeal No. 3691 of 2001 is partly allowed only to the limited extent as indicated hereinabove, with no order as to costs. Decree accordingly.

17. Since the main appeal has been disposed of, Civil Application No. 9760 of 2001 for stay does not survive and it is also accordingly disposed of with no order as to costs.

(Y.B.Bhatt,J.) (H.H.Mehta, J.)

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